IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 200 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

HINDUSTAN MARBLES PVT. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 200 of 1993
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following two questions have been referred for the opinion of this Court in respect of assessment year 1984-85 :-

"(1) Whether, the Appellate Tribunal is right in law and on facts in directing the Income-tax Officer to delete the disallowance of Rs.10,913/- made under section 40A(8) of the Act ?

(2) Whether, the Appellate Tribunal is right in law and on facts in directing the Income-tax Officer to allow deduction in respect of sales-tax liability of the last quarter to the extent the liability has been discharged by actual payment before the due date applicable for furnishing the return of income under section 139 (1) ?"

2. We have heard Mr Akil Kureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. As far as question No. 1 is concerned, our attention is invited to the decision of this Court in Agew Steel Manufacturers Pvt. Ltd. vs. CIT, (1994) 209 ITR 77. In the aforesaid decision, this Court has held that Clause (b) of the Explanation to section 40A(8), while defining the word "deposit", has made no exclusion in favour of directors, friends, relatives, etc., and, therefore, deposits by such persons in their current accounts cannot be excluded. Therefore, under section 40A(8), the interest paid by the assessee-company on amounts received from friends and relatives of directors and directors and shareholders can be subjected to a disallowance of 15 per cent, as contemplated by the Section.

Following the aforesaid decision, our answer to question No. 1 is in the negative i.e. in favour of the revenue and against the assessee.

4. Coming to question No. 2, our attention is invited to the decision of the Apex Court in Allied Motors (P) Ltd. vs CIT, (1997) 224 ITR 677. In view of the fact that the amount which was paid by the assessee as sales-tax was for the last quarter of the accounting year and that though the amount was paid after expiry of the accounting year, the liability was discharged by

actual payment before the due date applicable for furnishing the return of income under Section 139(1), following the aforesaid decision, our answer to question No. 2 is in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-